

Arizona Jury Reforms Take Hold in California



More than 10 million California citizens are called to provide jury service each year; however, the response rate has historically been only around 12 percent, making the need for streamlining jury management and improving juror satisfaction strikingly clear. Just talk to a juror who has listened to several weeks of testimony and was given no information on what he was to decide in the case until after closing arguments. Or imagine, as a juror, waiting two hours outside a courtroom for a trial to begin only to be told that you aren't needed, or listening to an hour or two of complex jury instructions only to be given a single written copy for the entire

juror understanding and effectiveness in the trial court process, based largely on the jury management innovations established in Arizona.

BOLD MOVES IN BUTTE

Judge Warren, in conducting his direct civil calendar in Butte County, has incorporated reforms such as pre-instructing jurors more thoroughly; providing instructions that briefly explain applicable substantive law; and providing notebooks, filled with writing paper, jury instructions, and a list of any written documents that will be entered as evidence. Other potentially more controversial changes include reducing jury size from 12 jurors

reduced time and costs, but even greater benefits reaped by jurors.

Allowing juror questions during a trial, for instance, is an enormous gain to jurors, according to Judge Warren, because it gets them more involved. Another advantage is that it decreases speculation. If a juror has a question that goes unanswered, it's much more likely that he or she will speculate about it in the jury room.

Judge Warren notes that while the innovations boost the quality of juror participation and service, each change comes with its own instructions. With juror notebooks, for instance, juries must be instructed on the proper taking of notes, the importance of not letting note-taking interfere with hearing testimony, and the importance of each juror's notes being used for their own recollection and not for persuading other jurors.

"The tangible benefits from these types of reforms are substantial, such as reduced time in the courtroom and fewer jurors required," states Judge Warren. "But in the end, the real 'savings' may be less concrete, but vastly more important—greater juror appreciation of the process, more attention to the case, less sharing with, and therefore less influence from, individuals outside the courtroom, and other impacts that ultimately improve the overall administration of justice in California."

THE L.A. STORY

Judge Jacqueline Connor, a Los Angeles Superior Court judge and a member of the Judicial Council Task Force on Jury System Improvements, has been on the cutting edge of jury reform for the past few years.

In the spirit of reform, Judge Connor has brought changes not only to her own courtroom, but has worked with fellow judges in nine other Los Angeles courts to incorporate jury reform into their courtrooms, including the criminal courtrooms of Judges Lance A. Ito, Terry A. Green, David S. Wesley, and Thomas Lyle Willhite, Jr. and the civil courtrooms of Judges Paul Boland, Gregory C. O'Brien, Jr., Charles W. McCoy, Jr., Carolyn B. Kuhl, and Peter D. Lichtman.

Some of the changes Judge Connor advocates include: allowing counsel the opportunity to offer mini-opening statements to the entire venire prior to voir dire; allowing counsel to present interim summaries of the evidence for jurors in long trials; providing jurors with the elements of the charges or complaint at the beginning of the trial; providing individual copies of the full instructions to jurors

Arizona Jury Reform Workshop December 5–8

A third Arizona Jury Reform Workshop, hosted by the Superior Court of Arizona, Maricopa County, will be held December 5–8 at the Trial Court Leadership Center in Phoenix. Superior Court of Riverside County Judge Dallas Holmes, chair of the Task Force on Jury System Improvements, will be presenting a paper at the workshop highlighting the efforts to date of the California task force.

● **Contact:** For more information regarding the conference, Sue Travelstead, Trial Court Leadership Center, 602-506-3711.

so they can read along with the court; permitting reopening of argument when a jury indicates it may be hung; allowing jurors to submit questions; and providing jurors with notebooks.

These reforms are not currently part of official judicial system policy, but instead can be implemented according to the needs of each courtroom. Although the reforms are voluntary, Judge Connor recognizes the increasing need to improve the jury system as quickly as possible.

"I have always been interested in improving jury management and the participation and understanding of jurors," states Judge Connor. "With the advent of one-day/one-trial, improvements to jury management take on an even greater urgency because we will be reaching out to and imposing on a wider pool of jurors than ever before. My goal is to create an atmosphere where jurors find value in the service they provide to the courts."

Judge Connor points to the growing track record for the Arizona changes and is working to gather substantive information on juror response to these changes. Judge Connor has spearheaded a pilot program to track the results of the Los Angeles reforms by sending questionnaires to jurors who've served in the selected courtrooms. Two courts have been actively tracking results over the past six months and already have received completed questionnaires from more than 200 jurors.

In discussing the pilot project, Judge Connor remarks, "Changes are happening all over the Los Angeles court system and many judges are doing wonderfully creative things that really work, but others may not know about them. My hope is to bring some greater visibility to these changes and provide a way that information can be shared on the results of those changes."

THE BIRTH OF REFORM

Many of the reforms grew out of the recommendations of the

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In Los Angeles and Butte Counties, where reforms initiated in Arizona have been implemented, greater juror participation, such as asking questions and taking notes during the trial, has resulted in jurors' positive feedback and heightened interest in the trials and the judicial process.

jury to share. Practices such as these have long been a part of California's jury management process and have led to some juror disenchantment with the judicial process.

A growing number of California judges are trying to change that, including Judge Jacqueline A. Connor of the Los Angeles Superior Court and Butte County Superior Court Judge Jerome E. Warren. For the past several years, both judges have begun making changes in their courtrooms to improve ju-

ry to 8; allowing jurors to discuss the case in the jury room in the presence of the entire jury prior to actual deliberations; allowing alternate jurors to participate in deliberation discussions, but not to vote; and allowing jurors to ask questions during the trial.

Each of the issues is discussed with the trial attorneys before the start of the trial, and each change is implemented only if both sides agree. Judge Warren indicates that there are definite benefits for the attorneys and involved parties in terms of

Highlights of Arizona In-Trial Innovations

The following is a partial list (representing in-trial reforms only) of the jury reforms that were recommended by the Arizona Supreme Court Committee on More Effective Use of Juries and are being evaluated by the Task Force on Jury Improvements for potential systemwide implementation in California courts.

- ◆ Set and enforce time limits for trials.*
- ◆ Create guidelines for severance in complex cases.
- ◆ Maximize jury trial time.
- ◆ Minimize trial interruptions.
- ◆ Provide juror notebooks in some cases.*
- ◆ Expand use of preliminary jury instructions.*
- ◆ Ensure note-taking by jurors in civil cases.*
- ◆ Improve management of trial exhibits.
- ◆ Deposition summaries should be used.
- ◆ Allow jurors to ask questions.*
- ◆ Educate attorneys and judges concerning interim summaries during trial.
- ◆ Use modern information technology more often in trials.
- ◆ Allow jurors to discuss the evidence among themselves during the trial.*
- ◆ Use only plain English in trials, especially in legal instructions.
- ◆ Do not keep jurors waiting while instructions are settled.
- ◆ Make jury instructions understandable and case-specific and give guidance regarding deliberations.
- ◆ Do not instruct juries on jury nullification; however, the Rules of Evidence ought to be expanded in recognition of the jury's power to nullify.
- ◆ Give jurors copies of the jury instructions.*
- ◆ Read the final instructions before closing arguments, not after.*
- ◆ Alternate jurors should not be released from service in criminal cases until a verdict is announced or the jury is discharged.*
- ◆ Allow all jurors remaining at the end of a civil trial to deliberate and vote.

*Resulted in Arizona Supreme Court rule changes effective December 1995.

First District Launches Mandatory Mediation Program

The Court of Appeal for the First Appellate District (San Francisco) will launch a two-year pilot mediation program following the recommendation of the Appellate Mediation Task Force. The task force, appointed by Chief Justice Ronald M. George in 1997, examined existing appellate mediation programs in the state and nation and evaluated the appropriateness of such a program in the First Appellate District. Similar programs already exist in the Courts of Appeal in Los Angeles, Santa Ana, and Riverside. The task force issued its report to Chief Justice George in 1998, urging the funding of a program in Northern California, and the Judicial Council approved the pilot program in July.

NOTEWORTHY GOALS

The mediation program will be mandatory for those cases selected for inclusion. Its goals are to reduce costs, time to resolution, and the adversary nature of litigation, while increasing dispositions and litigant satisfaction with the appellate process as well as conserving court resources, according to Associate Justice Ignazio J. Ruvolo of the First Appellate District's Division Two, task force chair. To the extent possible, mediation will be conducted before preparation of the record or briefs to minimize appellate expenses and disruption of the appellate process, thereby also ensuring the program is in harmony with the First Appellate District's suc-

cessful delay reduction procedures, Justice Ruvolo said. **ADMINISTRATOR APPOINTED** The new mediation program administrator is attorney John A. Toker, Alternative Dispute Resolution Administrator of the Superior Court of Santa Clara County, who has been involved in alternative dispute resolution (ADR) services for 28 years as an attorney, mediator, arbitrator, author, and lecturer. Mr. Toker also was an attorney at the Administrative Office of the Courts. Justice Ruvolo said, "I am extremely pleased that we were able to find someone of John's outstanding talents to head our

program. His superlative level of knowledge, experience, and accomplishments in ADR complement the high expectations we have for our program's success." **ATTORNEYS SOUGHT** Mr. Toker's duties will include (1) recruiting and selecting the

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mediation panel, (2) supervising mediator training, (3) designing and implementing the case selection system, (4) assigning mediators, (5) scheduling mediations, (6) evaluating mediators and the program, (7) protecting confiden-

tiality, and (8) reporting to the task force, the First Appellate District, the Judicial Council, mediators, and bar organizations. Mr. Toker will be assisted by a mediation program coordinator. Attorneys, including those with particularized experience in appellate practice, will serve as neutrals on a partially pro bono basis. The court will provide free formal training for those attorneys selected to be included on the First Appellate District's panel of neutrals, for which they will also receive MCLE credit. The first mediator class is expected to be selected and to complete training by early 2000. Cases pending appeal with the First Appellate District will begin to be diverted to mediation shortly thereafter. ■

Group Offers Support To Judges' Families

Not long after celebrating the appointment of her husband, Brent, to the Indiana Supreme Court in 1986, Jan Aikman Dickson was told—incorrectly, she later learned—that she could no longer assist in fundraising for organizations like the county chapter of the March of Dimes, for which she had served as chair. She received no official orientation on the state judicial code of conduct at the time.

Then her son, a college student active in county politics, learned that he was encouraged to recuse himself from poll monitoring in a local election, again because of code provisions that have since changed. "You mean that I have to give up my rights as an American citizen because my father is a judge?" he asked at the time. At first these accommodations seemed more like excep-

tions than rules, details to be observed in making the transition to public life. But the Dicksons soon learned that they were not alone in discovering that life on the bench means changes in life at home as well. At the New York Institute for Judicial Administration, where Justice Dickson enrolled in a program for appellate judges, Mrs. Dickson met the spouses of other justices. All of them had stories about the new demands on their lives and the unique ethical issues facing judicial families. "We put together a list of various topics and issues that seemed to be unique to judges' *Continued on page 8*

Jury Reforms

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Judicial Council's Blue Ribbon Commission report issued in May 1996 that proposed numerous improvements in jury system administration, including adoption of a one-day/one-trial system, making jury service mandatory for all qualified citizens, increasing juror compensation, and providing jurors reimbursement for transportation and dependent care, in addition to a large number of in-trial jury reforms based on the Arizona Supreme Court's jury innovations. The Blue Ribbon Commission's efforts have sparked a number of substantive court system changes as well as the creation of a 25-member Task Force on Jury Instructions chaired by Associate Justice Carol A. Corrigan of the Court of Appeal for the First Appellate District, and the Judicial Council Task Force on Jury System Improvements chaired by Riverside Superior Court Judge Dallas Holmes. According to Judge Holmes, the Task Force on Jury System Improvements is actively work-

ing on a number of key reforms including increasing juror pay to equal that of federal jurors, assisting courts in implementing the one-day/one-trial rule of court, developing a statewide master juror list to ease the burden of juror selection in each county, and establishing a mechanism through which jurors have access to free public transit while providing jury service by using models already developed in San Diego and Riverside. The task force is also evaluating 30 to 40 of the successful Arizona reforms in an effort to develop appropriate court rules to facilitate these changes in California. "All of these reforms are very important to improving jury management in the California court system. But even more important is the message they send to jurors, letting them know that we value their time and recognize that their efforts are not only extremely valuable, but critical to the proper administration of justice in this state," adds Judge Holmes.

MAKING A DIFFERENCE

The innovations that Judges Connor, Warren, and others have

been putting into practice have generally been met with enthusiasm. One recent juror in Judge Warren's courtroom—a bright, young, independent contractor whom the judge had refused to excuse based on hardship—thanked Judge Warren at the completion of the trial for not letting him off jury duty, remarking that the trial had been one of the most fascinating experiences in his life. Noting similar stories, Judge Connor has been impressed with the early results of the reforms, not just based on juror comments but also on the outcomes of the trials themselves. One of the reforms Judge Connor has put into practice—allowing attorneys to reopen argument in areas of conflict identified by juries who suggest they may be hung—has actually resulted in a reduction of mistrials. She has allowed argument to be reopened in her courtroom on only four occasions so far. In three of the four cases, the juries have ultimately been able to reach verdicts, both convictions and acquittals. Judge Connor further reports that comments by jurors indicate an overwhelmingly positive reac-

tion with some other unexpected benefits. For instance, questions typically generated during deliberations have been eliminated entirely, and jurors indicate a stronger ability to focus on and follow proceedings. Jury reforms appear to be a good way to overcome the stereotypical reluctance people feel toward jury duty and instead make them want to be a part of it. Judge Warren adds, "One of the most remarkable things about the improvements is how they have changed what happens after the case is over. It used to be that when a case ended, the jurors were out of the room in a shot. Now when the trial is over, they want to talk with the attorneys, the court staff, each other . . . they don't want to leave. That, to me, says it all." ● Contact: For more information regarding implementation of these reforms or for a complete listing of the Arizona reforms, contact Kim Taylor, Program Manager, Jury System Improvement Program, Trial Court Services, 415-865-7588. ■

Judicial Families

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families,” recalled Mrs. Dickson in a telephone interview. “And at the end of the program we all wished that there were opportunities for us to learn more. I realized that I was in a position to begin the conversation on some of the solutions that are available for judicial families.”

FIRST OF ITS KIND

In 1987, Mrs. Dickson founded the Judicial Family Institute (JFI), the first national group con-

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cerned solely with the challenges of public life for judicial families. The board of this nonprofit group includes state supreme court spouses from around the country, including Mrs. Barbara George, wife of California Chief Justice Ronald M. George, who joined the board last August.

Judges, of course, are accustomed to strict codes of conduct, many based on the American Bar Association’s Model Code of Conduct. But their families too are subject to provisions found in the codes of the federal and state judicial systems (*see sidebar for California code*). And while new judges are aware of the provisions, spouses and children of judicial officers are often unprepared for the sometimes subtle daily shifts and occasionally profound changes in their lives.

In addition to the ethical guidelines detailed by judicial conduct codes, JFI has also focused on the experiences of parenting in high-visibility situations, dealing with the stresses from campaigns, and taking security precautions away from the courthouse for all members of judges’ households.

The role of the group, which maintains an office at the Indianapolis headquarters of the Indiana Bar Foundation, continues to expand as the issues facing judicial families grow. “Recently I have been in touch with people who are interested in financial issues,” said Mrs. Dickson. “Most judges make less money as judges than they would as attorneys, so over the next year we will be amplifying stories about people who are making the adjustment gracefully.”

A major focus of the group in recent years has been on family security precautions. “It wasn’t a concern early on,” said Mrs. Dickson. “I would say that it has dramatically increased over the last few years, and we have gathered information on ways of dealing with threats to judges and their families. There was a notable increase in concern after the Oklahoma City bombing.

“Our goal,” she adds, “is preparation, not paranoia.”

RESOURCES AVAILABLE

JFI’s collective wisdom about judicial service is shared in the group’s occasional newsletter, *Welcome to Public Family Life*, which is mailed to some 2,000 or more families, and in judicial forums around the country. The group co-sponsors an annual program with the American Judicature Society (AJS) and serves as a consultant to the society’s Center for Judicial Conduct Organizations. A new publication, *An Ethics Guide for Judges and Their Families*, will be available from AJS in March 2000.

The institute also works with judicial educators in developing curricula for the families of new judges. In California, the California Judges Association (CJA) sponsors several programs specifically on family issues. The California Center for Judicial Education and Research (CJER) has also developed several programs for spouses and guests who accompany judicial officers to education programs. Discussion topics traditionally have included the California Code of Judicial Ethics and its implications for families and friends of judicial officers, and an overview of judicial education opportuni-



Judicial Family Institute board members are, left to right, seated, Jane Harding (Florida), Shirley Taylor Frye (North Carolina), Debra Lambert (Kentucky), Jan Aikman Dickson (Indiana); standing, Barbara Lumpkin (Oklahoma), Mary Moyer (Ohio), Ilona Holland (Delaware), Tom Korson (Colorado), Ann Jones representing Norma Feldman (Arizona), Barbara George (California), and Suzy Veasey (Delaware). Not pictured: Cynthia Gray (Illinois) and Norma Feldman.

ties and requirements. Special courses offered for spouses and guests have included Stress Management and Health Issues and the Courts.

The Judicial Family Institute would like to see programs like these expanded and extended to other states.

“Our objective is to share a variety of solutions families use so that people who are new to

the judiciary can view a range of options,” said Mrs. Dickson. “We don’t provide advice since every community is unique, but we can at least initiate and facilitate the discussion and let families know that they are not alone.”

● Contact: Judicial Family Institute, P.O. Box 1802, Indianapolis, IN 46206-1802; jfamily@aol.com. ■

Conduct in California

The following sections from the California Code of Judicial Ethics are relevant. View the entire code at www.courtinfo.ca.gov/rules/1999/appendixjudethic.pdf.

Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.

B. Use of the Prestige of Judicial Office

(1) A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

Canon 4. A judge shall so conduct the judge’s quasi-judicial and extra judicial activities as to minimize the risk of conflict with judicial obligations.

D. Financial Activities

(1) A judge shall not engage in financial and business dealings that

(a) may reasonably be perceived to exploit the judge’s judicial position, or
(b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves.

(5) Under no circumstance shall a judge accept a gift, bequest, or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge. A judge shall discourage members of the judge’s family residing in the judge’s household from accepting similar benefits from parties who have come or are reasonably likely to come before the judge.

(6) A judge shall not accept and shall discourage members of the judge’s family residing in the judge’s household from accepting a gift, bequest, favor, or loan from anyone except as hereinafter provided:

(a) any gift incidental to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge’s spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) advances or reimbursement for the reasonable cost of travel, transportation, lodging, and subsistence which is directly related to participation in any judicial, educational, civic, or governmental program or bar-related function or activity, devoted to the improvement of the law, the legal system, or the administration of justice;

(c) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other member of the judge’s family residing in the judge’s household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge, provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judges in the performance of judicial duties;

(e) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;

(f) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(g) a loan in the regular course of business on the same terms generally available to persons who are not judges;

(h) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.